

# The Muthesius Controversy: A Tale of Two Liberalisms

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## I. Introduction

The competition law of the Federal Republic of Germany came into effect on January 1st, 1958, replacing the Allied antitrust regulations that had prevailed since World War II. The passing of the law marked the end of a long debate on the specifics of regulating anti-competitive behavior in which several proposals had been considered by the Federal Parliament (Gerber 1998, 274–76). On a more fundamental level, however, this debate also touched upon the question of whether anti-competitive behavior should be regulated at all. The importance of such a regulation was emphasized by German ordoliberals in the tradition of Walter Eucken, but was rejected by liberals who argued along the lines of the Austrian school.<sup>2</sup> As the monetary economist Friedrich Lutz, a student of Eucken, noted in 1956: “The discussion about cartels has revealed a deep rift among the liberals in Germany” (Lutz [1956] 1989, 152).

The tension between the Austrian and the ordoliberal position became evident in a journalistic controversy of this period that involved several prominent liberal intellectuals, most of them members of the Mont Pelerin Society (MPS).<sup>3</sup> The controversy was sparked by an article in the very first issue of the *Monatsblätter für freiheitliche Wirtschaftspolitik*, a publication edited by MPS associate Volkmar Muthesius. The essay in question was authored

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<sup>2</sup> Throughout the paper, the term “liberal” will be used in the classic British (rather than the American) sense.

<sup>3</sup> For a history of the MPS see the studies by Hartwell (1995) and Plickert (2008).

by the journalist Hans Hellwig. It is entitled “We don’t need antitrust legislation” and argues that a competition law – as recommended by Eucken – constitutes an unnecessary interventionism on the part of the state. Curiously, Hellwig aims to prove the interventionist character of Eucken’s position by pointing to the fact that it was tolerated by the Nazis. He writes: “The ideas of Böhm, Eucken and Miksch on antitrust policy and on ‘Leistungswettbewerb’ [...] were allowed to be published unchallenged in the series of the Academy for German Law edited by Reichsminister Dr. Hans Frank. This certainly does not prove anything against these ideas, but at least something against their liberal substance” (Hellwig 1955A, 17).<sup>4</sup> The three authors mentioned by Hellwig were all part of the so-called Freiburg school, a group of liberals present at Freiburg University during the 1930s and 1940s.<sup>5</sup>

It should be noted that Hellwig and Muthesius had friendly ties with the ordoliberalists that extended beyond Muthesius’ MPS membership. Together with Franz Böhm, Muthesius was among the founding members of the Walter Eucken Institut (WEI), a think tank established in 1954 to continue the Freiburg research tradition after Eucken’s unexpected death. Furthermore, Muthesius was in regular contact with Eucken’s widow Edith Eucken-Erdsiek during the 1950s.<sup>6</sup> Hellwig was a colleague of Leonhard Miksch at the *Frankfurter Zeitung* between 1937 and 1943. Given the relationships between the people involved, the motivations behind Hellwig’s allegation are not obvious.

In any case, the article reflects a division among liberals with regard to the proper role of government. While the MPS is generally classified as “neo”liberal (Plickert 2008, 1–4), the question of whether and how liberalism should *change* was often controversial among its members. Neoliberal thought – such as German ordoliberalism – places a (renewed) emphasis on the need for a framework of legal rules which ensures that markets provide socially desirable outcomes (see Friedman 1951). This perspective, however, contrasts with the old liberal dogma of Laissez-faire. As will be shown, the issue of competition policy in particular became a focal point of the differences between the two liberalisms old and new.

This paper offers new insights into the “deep rift” among German liberals diagnosed by Lutz and highlights fundamental differences between the schools of thought present within

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<sup>4</sup> All translations by the authors, unless indicated otherwise.

<sup>5</sup> For an introduction to the research program of the Freiburg school see Vanberg 1998.

<sup>6</sup> Both Eucken and Miksch died in 1950. For biographical details on Eucken, Eucken-Erdsiek or Miksch see Klinckowstroem (2000, 2008) and Goldschmidt and Berndt (2005), respectively. The letters of Eucken-Erdsiek are currently under investigation at the Thüringer Universitäts- und Landesbibliothek in Jena.

the MPS during the 1950s. In addition, the nature of Hellwig's argument requires us to investigate the relationship between the Freiburg school and national socialism. Our analysis is based on an exchange of letters that Eucken-Erdsiek donated to the WEI. The correspondence consists of 28 individual letters sent between May 3 and July 4, 1955. It includes letters from Eucken-Erdsiek, Hellwig and Muthesius, as well as from Wilhelm Röpke and Alexander Rüstow – the main representatives of sociological liberalism – and from the prominent Austrians Friedrich Hayek and Ludwig Mises. To the knowledge of the authors, most of these letters have never been analyzed before.<sup>7</sup> Notably, all of the participants of the correspondence except for Hellwig were members of the MPS; all of the academics involved, except for Mises, were *also* associated with the WEI.<sup>8</sup>

The rest of the paper is organized as follows. Section 2 describes the place of the Freiburg school in the neoliberal movement of the early 20th century and compares Eucken's arguments in favor of competition policy to the Austrian perspective. Section 3 reviews Hellwig's original article and features the full paragraph in which he explains the supposed connection between the Freiburg school and the Nazis. Section 4 describes the exchange of letters in chronological order. Section 5 provides a critical assessment of Hellwig's argument regarding national socialism. We conclude with additional remarks.

## **II. The (ordo)liberalism of the Freiburg school**

As we have said before, Hellwig supposes that the Nazis detected some “illiberal” ideas in ordoliberal thinking that they sympathized with. Since it is precisely the *liberal quality* of the Freiburg school that is at stake here, some remarks about the role of this school in the history of the liberal movement seem necessary at this point. We also need to specify both the ordoliberal and the Austrian perspective on competition policy.

There are two important aspects that connect the Freiburg school to classical liberalism. First, Eucken and his colleagues wanted to treat specific economic questions as

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<sup>7</sup> In some cases, our findings complement already-known private correspondence. Hülsmann (2007) describes the incident depicted in this paper based on the May 1955 correspondence of Mises and Muthesius (1007, fn 36). Plickert (2008) mentions a report on the controversy sent by Hayek to fellow MPS member John Jewkes (202, fn 7). Solchany (2014) cites a letter from Röpke to Rüstow that addresses the discord between Röpke and Muthesius following Hellwig's article (112).

<sup>8</sup> Eucken-Erdsiek, Hayek, Lutz, Mises, Mötteli, Muthesius, Röpke and Rüstow were members of the MPS. Lutz, Muthesius, Röpke and Rüstow were founding members of the WEI. Hayek served on the Board of Trustees of the WEI.

part of an overall institutional framework, the so-called economic constitution (Böhm et al. [1936] 1989). Instead of considering the individual choice calculus within a *given* framework of rules, they aimed to examine choice among rules – a concept much closer to Adam Smith’s original objective for Political Economy than to the Walrasian tradition.<sup>9</sup> Second, the Freiburg school can be understood as a decisively liberal project because of its recurrence to liberal values: Eucken emphasizes that economic as well as political institutions are ultimately to be judged on their ability to insure individual freedom and voluntary exchange (Eucken [1952] 2004, 369–71). This liberal outlook bears a close resemblance to the tradition of the Scottish Enlightenment that motivated Smith’s “obvious and simple system of natural liberty” (Smith [1776] 1976, 208).

The formation of the Freiburg school is linked to another development of the interwar period, namely the conscious revival of liberal thought. In Germany, this revival began during the political and economic turmoil of the Weimar Republic and took the form of a *revision* of liberal ideas. An early statement demanding a new kind of liberalism is Rüstow’s speech given at the meeting of the Verein für Socialpolitik in 1932. Here, Rüstow argues that the economic crisis of his time can be solved neither by the interventionism of the state – an interventionism that in his view caters to special interests instead of promoting general welfare – nor by the liberal prescription of Laissez-faire. He outlines a third way, a “liberal interventionism” which advocates for a government that acts in accordance with market forces rather than against them. Rüstow posits that “the mere guarantee of market freedom and fair competition with the same rules for everyone [...] requires a strong state, which stands above the groups, above the interests” (Rüstow [1932] 1963, 257).

A different approach to the revival of liberal thought can be traced back to Mises’ economic seminar in Vienna, which Hayek attended before leaving for the London School of Economics in 1931. For Mises, the way forward was to strengthen what he perceived as the core attributes of the liberal tradition. His 1927 book *Liberalismus* defends the 19th century concept of a minimal or “night-watchman state” and promotes the ideal type of an unhampered market economy in which the government abstains from intervening in the market process (Mises [1962] 2005, 15–19, 30–33).<sup>10</sup> Obviously, Mises and Rüstow disagree on the extent to which the proper operation of markets depends on the regulatory activity of the state.

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<sup>9</sup> In this regard, the Freiburg school can also be interpreted as a forerunner of the research program of Constitutional Political Economy (see Vanberg 1988, 2005).

<sup>10</sup> The book was later translated into English; we refer to the US edition of 1962.

As has been argued, a distinction may be drawn between the “free-market liberalism” of the Austrians – the insistence on an unhampered market process – and the “constitutional liberalism” of the Freiburg school (Vanberg 1999). Similar to Rüstow, Eucken and his colleagues at Freiburg University wanted to complement the liberal ideas of the past with a new role for the state. However, they argued that the kind of “interventionism” required from the state to enable a functioning market economy is regulation on the level of the *rules* of the market process – the economic constitution – rather than regulation of the market process itself (Eucken [1952] 2004, 242). While both Eucken and Mises were opposed to what may be described as “regulation by command”, the Freiburg school economists emphasized the possibility of shaping the institutional framework in which all economic activity takes place (see Vanberg 1999, 220–28).<sup>11</sup>

The liberal values adopted by Eucken led him to propose a specific type of economic constitution, the competitive order. The declared aim is to provide a framework of rules in which the free pursuit of the individual’s interest is restricted only by the freedom of others (Eucken [1952] 2004, 250).<sup>12</sup> Eucken’s framework is based on a number of *constitutive* or basic principles such as the functioning of the price mechanism, open markets and private property (254–289). Its *regulative* principles, on the other hand, are policy measures designed to uphold the basic principles. This second set of principles also includes prescriptions for dealing with market power. In line with the general aim of Eucken’s competitive order, positions of private economic power – e.g. the ability to dictate prices or terms of a transaction (49–52) – are supposed to be minimized. This can be accomplished by subjecting all market participants to competition (375–76). As Böhm would state in retrospect, the Freiburg school viewed competition primarily as “an instrument for the deprivation of power” (Böhm, quoted from Vanberg 1998, 176).

There is, however, an important distinction to be made. The members of the Freiburg school did not expect this desirable outcome from any kind of competition, but only from what they referred to as *Leistungswettbewerb* (“performance-competition”). This type of competition can be distinguished from *Behinderungswettbewerb* (“prevention-competition”)<sup>13</sup>

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<sup>11</sup> In contrast, the imperative of *Laissez-faire* offers little guidance when it comes to the question of how market processes should be framed. Mises never acknowledged this difficulty when criticizing “*ordo-interventionism*” (Mises, quoted from Hülsmann 2007, 880).

<sup>12</sup> It is important to note that the economic constitution has implications for the political system as well. According to Eucken, an economic constitution that prevents exploitation by private actors should be supplemented with political institutions such as the rule of law and the separation of powers that limit the oppressive power of the state (Eucken [1952] 2004, 48–53).

<sup>13</sup> The translations are taken from Vanberg 1998.

which includes all competitive strategies aimed at *hindering* competition, such as cartels (Eucken [1952] 2004, 247). It is a key insight of the Freiburg school that unhampered markets are not a sufficient condition for the establishment of a functioning market economy; rather, measures are needed to assure the long-term preservation of competition.<sup>14</sup> These measures include an independent competition authority as the main form of controlling economic concentration (291–99). The criterion employed to distinguish permissible from non-permissible acts of competitive behavior is that of consumer sovereignty (see Böhm [1933] 1982).

Eucken and his colleagues did not always evaluate market behaviour against the criterion of performance-competition. They also resorted to the criterion of perfect competition, i.e. the equilibrium condition in which prices are equal to marginal costs. For example, Miksch proposed that the competition authority should make monopolies act “as if” they were acting under perfect competition (Miksch 1948, 333) – an approach that arguably requires the competition authority to possess a large degree of information about the market in question.<sup>15</sup> Of course, evaluating markets – and the necessity of regulatory activities – against the criterion of perfect competition may be very different from employing the criterion of performance-competition (Vanberg 1998, 176–77).

The Austrian perspective on these matters can be derived from Mises’ discussion of cartels as “monopolistic enterprises” (Mises [1962] 2005, 63–67). While he acknowledges the existence and the undesirable nature of monopoly prices, it is clear that to Mises, the most prominent source of market power is the state: “Twist and turn the monopoly problem as one may, one always comes back to the fact that monopoly prices are possible only where there is control over natural resources of a particular kind or where legislative enactments and their administration create the necessary conditions for the formation of monopolies. In the unhampered development of the economy [...] there is no tendency toward the exclusion of competition” (67). Underlying this conviction is the idea that – without governmental protection of the producers – monopolistic market positions will attract enough competition for the market to return to equilibrium prices (64). Thus, the contestability of markets solves

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<sup>14</sup> The Freiburg school shares its focus on competition policy with early representatives of the Chicago school such as Henry Simons (Köhler and Kolev 2013). Later Chicago economists were more critical of Simon’s “interventionist” agenda and questioned his standing as a classical liberal (see the emphatic defense by De Long 1990).

<sup>15</sup> With reference to Hayek’s analysis of knowledge problems, the attempt to compare the outcome of real-life markets to perfect competition has been criticized as being “the most unrealistic and faulty aspect [...] of the early Freiburg School” (Sally 1996, 240).

the problem of market power over time if undisturbed “catallactic competition” prevails.<sup>16</sup> In contrast to the economists of the Freiburg school, Mises assumes that under a regime of Laissez-faire, private economic power rests solely in the hands of the consumers (Mises [1949] 1998, 275).

### **III. “We don’t need antitrust legislation”**

So far, we have distinguished the free-market liberalism of the Austrians from the ordoliberal thought of the Freiburg school. We have also shown that these two liberalisms translate into different beliefs with respect to the problem of cartels and monopolies. With this in mind, we will now turn to a discussion of Hellwig’s article as well as the ensuing exchange of letters.

The short, four pages article in question is entitled “We don’t need antitrust legislation” (Hellwig 1955A). In this article, Hellwig emphasizes the “opposing forces” that cartels are exposed to under a regime of free competition. He explains: “To restrict competition means to reduce supply or demand, thus requiring a behavior that only rarely has a chance of success” (19). Since Hellwig views cartels as unsustainable, he believes that denying them legal protection is a sufficient solution to the problem of collusion. Active competition policy, on the other hand, constitutes an unnecessary intervention by the state. Hellwig concludes by arguing that the damages done by a competition authority will always outweigh the damages done by cartels.<sup>17</sup>

These arguments are not by themselves surprising or overly controversial. However, the intention of Hellwig’s article is to reveal the interventionist character of competition law by “testing” several aspects of it, namely the economic interests involved, the underlying theory and the foreseeable consequences (16). When it comes to testing the second aspect, Hellwig invokes the proximity between the Freiburg school and national socialism. Clearly, this proximity is supposed to serve as a proof of the interventionist character of competition law. Hellwig says the following: “The ordoliberal beliefs, especially of the Freiburg school, sail under the flag of neoliberalism. From the perspective of the history of economic thought,

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<sup>16</sup> Mises’ dynamic perspective on competition has been developed further by his student Israel Kirzner, who argues that (temporal) monopolies can be the result of “alert” entrepreneurs achieving a favorable market position before others follow their lead (Kirzner 1973, 88–134).

<sup>17</sup> In more modern terms, Hellwig anticipates a false positive or “Type I error” by the competition authority. On the different types of regulatory errors and the associated costs see Joskow and Klevorick (1979).

the term social liberalism would be more accurate, because Oppenheimer's ideas<sup>18</sup> are melded in a peculiar way with Eucken's theory of economic systems.<sup>19</sup> The ideas of Böhm, Eucken and Miksch on antitrust policy and on 'Leistungswettbewerb' – one used to speak more aptly of free competition – were allowed to be published unchallenged in the series of the Academy for German Law edited by Reichsminister Dr. Hans Frank. This certainly does not prove anything against these ideas, but at least something against their liberal substance. The national socialists had a fine nose for this. Just imagine that the three authors had brought forward the catallactic cartel theory by v. Mises instead of their demand for Leistungswettbewerb secured by the state and supported by the theory of economic systems: what was granted to the doctrine of Leonhard Miksch would undoubtedly have been denied to that of Ludwig v. Mises. Immediately, the national socialists sensed the interventionist-socialist element of this new theory of competition. In Bolshevist Russia, too, every third word is 'competition'. While in a liberal economic system, unhindered competition follows from the private ownership of the means of production, to the socialist, competition is an official duty, a state-run 'event'<sup>20</sup>, virtually the justification of private ownership" (17).

#### IV. The exchange of letters

The exchange of letters begins on May 3, 1955. On this date, Carlo Mötteli, a journalist for the *Neue Zürcher Zeitung* (NZZ), writes to Muthesius to inform him that he will no longer contribute to the *Monatsblätter*. The reason for this is that Mötteli regards the publication of Hellwig's article as an "inexcusable faux-pas", not because of Hellwig's stance on competition law, but rather because of "the defamation of a school that in my opinion the Federal Republic owes very much to". In his answer, dated May 5, Muthesius insists that Hellwig's conclusion – that cartels should be denied legal protection – is in line with arguments put forward by Böhm. He does not address Mötteli's criticism. On the same day however, Muthesius sends the first issue of the *Monatsblätter* to Eucken-Erdsiek and asks her opinion on Hellwig's article. Apparently, he sends a similar request to Röpke.

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<sup>18</sup> Franz Oppenheimer was Ludwig Erhard's doctoral adviser and an advocate of "liberal socialism". His work had considerable influence on Rüstow as well (see Janssen 2009).

<sup>19</sup> On Eucken's theory of economic systems see Eucken 1950, 117-77.

<sup>20</sup> Hellwig speaks of competition as a "staatliche Veranstaltung", which is a direct quote from Miksch. The term has also been translated as "a game that is regulated by the state" (Goldschmidt 2005, 977).



In her answer of May 7, Eucken-Erdsiek echoes Mötteli's thinking that the issue at hand is not one of economic policy. She writes: "The crucial point [...] is that my husband's ideas and those of his circle seem to be denied their 'liberal substance', at least to a certain degree". If Muthesius interprets Hellwig's article differently, she argues, he should clear up the misunderstanding in his publication. Eucken-Erdsiek maintains that the Nazis "did not have an inclination for our ideas. [...] The inclusion in the series of the Academy for German Law only came about because of the involvement of Jens Jessen and Count von Wartenburg, who had already mentally joined the resistance at this time".<sup>21</sup> On the role of Oppenheimer she says that "my husband never had a connection to Oppenheimer and felt that his influence was unfortunate".

Röpke replies on May 9. While he is indignant about the article, he suggests that Muthesius must have overlooked Hellwig's offense in a "moment of distraction". Röpke proposes that Muthesius – to whom he still refers as a "dear friend" – should admit to this mistake in the next issue of the *Monatsblätter*. In another letter of May 9, Röpke shares his thoughts with Eucken-Erdsiek. She notes in her answer (May 11) that Hellwig's remarks, too, may be attributable to "a very unfortunate Lapsus [involuntary mistake], but not a Dolus [intent]".

This assumption is proven wrong almost immediately. On May 13, Hellwig writes to Muthesius and comments on the three letters to the publisher mentioned above, as well as an unknown letter from Lutz.<sup>22</sup> In his statement, Hellwig defends his interpretation of the relationship between the ordoliberalists and the Nazi regime. The following day, Muthesius sends Hellwig's account to Eucken-Erdsiek, Röpke and Rüstow (who had apparently called Muthesius on May 13). In the accompanying letter to Eucken-Erdsiek, he proposes that "one of the gentleman of your inner circle" should draft a response to Hellwig to be published in the *Monatsblätter*.

Hellwig opens his letter by comparing Röpke's demand for correction with the suppression of thought in communist Russia, cryptically adding that "apparently, from the root of intolerance, the same poisonous flowers spring up everywhere". He then proceeds to his main argument. By Hellwig's account, it is obvious that the Nazi regime was not sympathetic to Eucken and his colleagues. Nevertheless, the members of the Freiburg school

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<sup>21</sup> Eucken-Erdsiek also reminds Muthesius of the fact that both men were later executed for their role in the German resistance movement [in 1944].

<sup>22</sup> Lutz summarizes this letter to Muthesius in a largely private message to Eucken-Erdsiek dated May 15. He writes that he "only came to Mötteli's defense" and thought that the relevant passage was "distasteful".

were able to publish their ideas. This implies that the Nazis liked *some* of those ideas enough to disregard *other* aspects of their thinking. According to Hellwig, Miksch never disputed that the Nazis liked the “illiberal part” of ordoliberal thinking, namely their concept of competition (i.e. Leistungswettbewerb). This line of thought is taken up again when Hellwig declares that “all three appearances of socialism, the democratic as well as the communist and the national socialist, appreciate a governmental organization of competition”. While Hellwig says he understands that the ordoliberals object to being categorized in this way, he insists that he merely offers a new interpretation of well-know facts: “The notion that the neoliberal concept of competition did not find favor with the rulers of the Third Reich is based on a factual error”.

The reactions to Hellwig’s statement are mixed. In a letter of May 16, Röpke states his “painful disappointment” with Muthesius. In what he regards as a last attempt to convey his standpoint, Röpke expresses his sympathy with the view on cartels represented by Hellwig and Muthesius. He argues, however, that the disagreement is not about factual matters: “The question was and remains whether it conformed to the principles of decency and good taste to express these insinuations”. Röpke urges Muthesius again to distance himself from Hellwig’s allegation; only then could the ordoliberals comment on the factual aspects of the issue. On May 18, Eucken-Erdsiek reminds Muthesius of their common goal: “It is only a small circle of people for whom freedom is a genuine concern [...]. You’re part of it, Mr. Muthesius, but so are all others involved in this matter”. Similar to Röpke, she urges Muthesius to declare publicly “that it was out of the question to deny the representatives of ordoliberalism their liberal disposition”. This view, however, is not shared by Rüstow. In a letter to Muthesius from May 23, he emphasizes that a statement as proposed by Eucken-Erdsiek would not suffice.<sup>23</sup> He believes that Hellwig denounces Eucken, Miksch and Böhm as “collaborators of national socialism” and takes offense at the “treacherous way” in which historical facts are presented to verify this claim. Rüstow then offers his own account of the realization of the 1942 book. “In actual fact, the volume [...] was a cuckoo’s egg that the neoliberal Freiburg circle succeeded in planting into the national socialist series, therefore an act of intellectual sabotage against national socialism”. He adds that the Nazis reacted to the publication by prohibiting further meetings of the circle, forcing them into illegality.

Mises weighs in on May 18. In a letter to Muthesius, he refers to Hellwig’s accusation as a “statement of facts” and explains: “Hellwig’s interpretation, namely that the ideas of the

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<sup>23</sup> A short message send to Eucken-Erdsiek on the same day contains a summary of the letter to Muthesius.

three authors concerning antitrust legislation would [...] not have been admitted into a series of the ‘Academy for German Law’ [...] if they had contradicted the views held in national socialist circles, is irrefutable. [...] Hellwig did not suggest that the three authors were national socialists or accommodated national socialism in any way. Surely, it ought to be permissible to point out the conformity of individual elements of different economic programs. [...] It is simply true that he who advocates any kind of interventionist measures places himself in this regard in a circle that appears to him as quite undesirable”. Mises considers Eucken and his colleagues to be an example of a greater trend, expressing his belief that “many who call themselves neoliberal today are in actual fact moderate interventionists”. Still, the letter ends on a conciliatory note. Mises writes: “The upright demeanor that was proven by Böhm, Eucken and Miksch in the years of abominable rule has always filled me with admiration. I lament the early passing of Eucken and Miksch. I regard it as one of the few signs of a hopeful renaissance of German spirit that Böhm’s work finds more and more recognition. Nevertheless, I am unable to regard Hellwig’s article as a transgression of the permitted boundaries of scientific polemic”.

On May 20, Muthesius writes to Eucken-Erdsiek and Röpke to inform them that the second issue of the *Monatsblätter* will contain an article by him on the subject of competition policy as well as a footnote co-authored with Hellwig. In the letter to Röpke, Muthesius calls the charge of denunciation a “misunderstanding” – he seems convinced that the June issue will clear things up. A day later, Muthesius sends Eucken-Erdsiek the statement by Mises. Apparently, a second copy is sent to Rüstow.

Rüstow writes to Muthesius on May 25, discussing the contents of Mises’ letter. He agrees with Mises’ observation that neoliberals are essentially “moderate interventionists”, pointing to his own concept of liberal interventionism. In his view, a general rejection of interventionism cannot be optimal; rather, interventionist policies should be compared to substances that are “indispensable remedies in moderate doses, but deadly poisons in larger concentrations”. Regarding Hellwig’s insinuations, Rüstow repeats that the proposed footnote in the next issue of the *Monatsblätter* will suffice only if it addresses the moral stumbling block for the Ordo circle.

On May 24, the *Frankfurter Allgemeine Zeitung* (FAZ) publishes an article by Böhm entitled “Freiburg school and national socialism” (Böhm 1955) in which he takes a stance

against Hellwig's accusations.<sup>24</sup> On the same day, Eucken-Erdsiek writes to Rüstow expressing her belief that Böhm's article will bring so much attention to the subject of the relationship between the ordoliberalists and the Nazis that Hellwig and Muthesius will have to address this specific point in the next issue. A note from Röpke on June 3 confirms to her that Muthesius apparently wants to "calm the waves" with an explanation.

The second issue of the *Monatsblätter* appears on June 1st. It includes an article by Muthesius on antitrust policy. The long-awaited footnote reads: "Hellwig's reference to the toleration of the Ordo circle's ideas on competition policy by national socialism has been – to the surprise and regret of both the author and the publisher – perceived as an unfriendliness. And yet, this reference only made sense due to the fact that Böhm, Eucken and Miksch are writers who, by all means, did otherwise not have to expect benevolence from that side" (Muthesius 1955, 75). On June 10, Rüstow writes to Muthesius to say that "unfortunately, the second issue has not at all brought the anticipated easing of tension". He repeats that the matter at hand is not one of economic policy, but "solely an ethical question of humanity and decency". However, regarding the relationship of the Freiburg school and national socialism, the footnote merely reiterates what had been said before. Rüstow's letter also contains an interesting concession to the position of the Austrians. Referring to the actual content of Muthesius' article, Rüstow writes: "If the suspension of [protectionist] measures, in particular of all protective tariffs, would be achievable in practice, I, at least, would be readily prepared for the time being to await the success, and in the meantime to refrain from all other antitrust measures". Rüstow's emphasis on tariffs as an important hindrance to competition reflects arguments made by Eucken ([1952] 2004, 264–70), but also by Mises ([1962] 2005, 65–67, 98–103).

At the same time, Muthesius is still looking for an author to draft a reply from the perspective of the Ordo circle. On June 13, he writes to Eucken-Erdsiek, asking her to suggest a name. After a long silence, Eucken-Erdsiek answers on June 28. She states that she has spoken to "several gentlemen of our circle" and summarizes their perspective on the issue. The letter contains no new arguments, but a clear demand for a certain kind of correction: "To support his view, Mr. Hellwig has cited a fact – the inclusion in the series of the Academy for German Law – the true backgrounds of which were not known to him. In the meantime, he has been informed by us that in reality, this is a conspiracy, a planted cuckoo's egg. Mr. Hellwig could not have known this before, but now that he does, he ought to correct it. Unless

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<sup>24</sup> The article prompts a response from Hellwig, a letter to the editor published on June 8 (*FAZ* no. 131). Böhm comments on Hellwig's letter on June 29 (*FAZ* no. 147).

such a correction has taken place, I don't think that it will be possible to find an author for the article you proposed". Muthesius answers two days later, on June 30. He informs Eucken-Erdsiek that he has since received a long letter from Böhm, whom he plans to ask for the article.

The last letter dates from July 4 and is from Hayek to Muthesius. When he wrote the letter, Hayek had just returned to Chicago. Upon his arrival, he found the first two issues of the *Monatsblätter*. Hayek writes that he quickly came across a passage – he points to page 17 of the first issue – that appears to him as “a serious offense against the principles of decent discussion”. He continues: “As you know, with respect to the matter in hand, I am probably closer to the position developed by Mr. Hellwig than to the one attacked by him.<sup>25</sup> But this has nothing to do with the style of the attack against Eucken, Miksch and Böhm; I regret this all the more since the use of such insinuations only weakens the factual arguments. I see from your footnote on p. 75 of the 2nd issue that apparently these remarks have already been received with discontent; yet I cannot avoid the impression that you are not aware of how wrong the tone adopted by Mr. Hellwig was and that the reputation of your publication demands that you distance yourself in the most unambiguous way from such methods of discussion”.

The exchange of letters ends here. The discussion, however, manifests itself in several more articles such as a report by Mötteli (1955) in the *NZZ*, a series of contributions by Hellwig in the *Deutsche Zeitung und Wirtschaftszeitung* (DZ, nos. 88-95) as well as the aforementioned paper by Lutz (1956).

## **V. The Freiburg school and national socialism**

For Hellwig, pointing to the (supposed) reception of ordoliberal ideas by the Nazis mostly serves as a proof for their “illiberal” quality. However, this reception is an interesting topic in its own right. As was hinted at in the correspondence, Eucken and Böhm were part of the German resistance movement against Hitler. They participated in drawing up a secret memorandum commissioned by Dietrich Bonhoeffer that outlined a possible political organization of Germany after the Nazi era and were arrested (Böhm) or interrogated

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<sup>25</sup> Hayek's view of competition and competition policy would require a lengthy explanation (see Kolev 2013, 68–72, 257–61). Suffice to say that while his earlier work has an ordoliberal flavor to it (e.g. Hayek [1944] 2007, 85–88) he was also keenly aware of the difficulties of enforcing competition in the face of limited knowledge (Hayek [1946] 1948).

(Eucken) following the failure of the 20 July plot (see Rieter and Schmolz 1993). However, there is a strand of literature that doubts the standing of certain (or all) members of the Freiburg school as representatives of the German opposition. Nils Goldschmidt (2005, 291–92) provides a short survey of this literature.<sup>26</sup> A common theme is that ordoliberalism represents an “authoritarian liberalism” (Haselbach 1991) that is inherently anti-democratic<sup>27</sup> and therefore complementary to Nazism.

While it is beyond the scope of our paper to address such claims, we want to evaluate the contribution of Hellwig and Muthesius to this discussion. Their position can be summarized by a statement made by Hellwig in the letter of May 13: “The whole point is that those works were allowed to be published even though the authors were frowned upon by the authorities or even persecuted by them. But they [the authorities] liked the thought of a governmental organization of the economy so much that they gladly ignored the remaining views of the authors”. As should be evident by now, this statement is aimed at the ordoliberal “organization” of competition.<sup>28</sup> Hellwig’s point of view can be contrasted with Rüstow’s assessment – backed by Eucken-Erdsiek – that “in actual fact, the volume [...] was a cuckoo’s egg that the neoliberal Freiburg circle succeeded in planting into the national socialist series, therefore an act of intellectual sabotage against national socialism”. Obviously, both positions can only be judged against the genesis and content of the 1942 volume.

The book in question was produced by Group IV of the Academy for German Law, a working group on economics that had been established in 1940 by Jens Jessen. The 1942 volume featuring contributions by Eucken, Böhm and Miksch is entitled “Competition as a means of boosting economic performance and selection” (translation: Rieter and Schmolz 1993) and was edited by Günter Schmölders. Its contents are the result of a symposium held in November 1941. As was mentioned in the exchange of letters, the efforts of Group IV were short-lived: it was closed in 1943 because it was deemed “not vital to the war effort” (98).<sup>29</sup>

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<sup>26</sup> With respect to the subject of this paper, two authors who are not part of Goldschmidt’s survey deserve mention. Arguing from a Marxist-Leninist perspective, Robert Naumann claims that “the position of the neoliberals means the total surrender of the old liberal concept of non-intervention of the state in economic life and an affirmation of the fascist command economy” (Naumann 1957, 71). A similar conclusion is reached by Hermann Turley (1961).

<sup>27</sup> For a recent discussion of this argument see Nientiedt and Köhler (2014).

<sup>28</sup> Writing for the *DZ*, Hellwig suggests that “party program, party literature, legislation and economic policy of national socialism emphatically advocated the fight against cartels” (Hellwig 1955B, 7).

<sup>29</sup> In the following, several members of Group IV formed the “Arbeitsgemeinschaft Erwin von Beckerath” (see Blumenberg-Lampe 1973, 29–54). Their findings on the organization of a peace-time economy after Hitler were received, among others, by the oppositional Kreisau Circle (48–49).

Eucken (1942) opens by arguing that the present economic system is dominated by elements of central planning, citing the forced allocation of labor and other inputs as well as the repressed inflation resulting from the price freeze that had been declared in 1936 (Eucken 1942, 29–30). He goes on to declare that in a post-war world, the economic system will have to change radically in order to allow for the provision of consumer goods (30–32). However, in Eucken’s opinion, the change towards a “free” market economy does not suffice; in the absence of planning, there are still tendencies towards the concentration of power (34–37). The solution to this problem is seen in the establishment of an economic constitution that upholds the rules of performance-competition (38). It would require the state to refrain from creating monopolies by legislative measures and a competition authority to exercise control over combines established by private actors (40–43). Eucken concludes by saying that only this type of economic constitution can maintain the “inalienable rights to freedom of the individual” (44). The contributions by Böhm and Miksch add to the subject of Eucken’s chapter, elaborating on the incompatibility of central planning and competition (Böhm 1942) and the regulation of imperfect competition (Miksch 1942).

When the volume was published, Röpke – writing from his exile in Switzerland – called it a “blatant denunciation of the complete fiasco of national socialist war and command economy” (Röpke, quoted from Janssen 2012, 215). Hauke Janssen maintains, though, that rather than being an act of “intellectual sabotage” the ordoliberal concept of competition was not subversive *as such* (215-16). He identifies two reasons. First, national socialist ideology was not by any means opposed to competition; the Nazis viewed competitive behavior as a selection mechanism that disposes of “weak” participants in the market. Indeed, the title of the 1942 volume points to the process of selection (*Leistungsauslese*). Second, the concept could have appealed to those within the party who advocated middle-class friendly policies.<sup>30</sup> The similarities pointed out by Janssen may explain why it was possible to publish these texts at all.

While the term “intellectual sabotage” may not accurately describe the 1942 volume, Hellwig’s claim regarding the national socialist’s propensity for *Leistungswettbewerb* is nonetheless misleading. Indeed, there are very few similarities between the ordoliberal imperative of performance-competition – to preserve competition in the face of anti-competitive behavior – and the *actual* “competition policy” of national socialism. The

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<sup>30</sup> For example, an early programme of the National Socialist German Workers’ Party demands the “creation of a healthy middle class” and the “nationalization of [...] trusts” (OUSCCPAC 1946), indicating a left-wing opposition to big business in general.

practice of economic policy under national socialism has been detailed by Franz Neumann ([1944] 2009). Neumann presents the bleak portrait of a state in which the political authorities and the largest representatives of private enterprise are deeply entangled, creating what he refers to as “Totalitarian Monopoly Capitalism”, i.e. an economic system that is both monopolistic and a command economy (261).

Notably, this system was part of national socialist policy making from the very beginning. The cartel decree of 15 July 1933 strengthened the cartel system of the Weimar Republic while putting additional pressure on smaller businessmen (261-65). On the same date, the Nazis also introduced a decree that enabled compulsory cartelization, explaining in the official press release that the “intensified competition and the low price level resultant therefrom [...] have brought nearer the point at which the ruin of enterprises valuable to our national economy is threatened” (266). Between 1933 and 1936, the ministry of economic affairs (RWM) oversaw the formation of 1600 voluntary cartels and imposed another 120 compulsory agreements (Tooze 2007, 108).

All pretense of maintaining a market economy was abandoned with the enactment of the Four-year plan in 1936 that was aimed at increasing productive capacity in preparation for the war. Even without the nationalization of industry, the Nazi state managed to seize control of the manufacturing process. Adam Tooze (2007) describes the mechanism by which this was done. A central role was assigned to the Business Groups (Wirtschaftsgruppen), compulsory associations that acted as a channel between businesses and the RWM. Political objectives were communicated to the Groups, who were then responsible for implementing them. From 1936 onward, the Groups were also in charge of overseeing the cartels (107-108). Thus, in the Nazi economy, industrial concentration became a means for the authorities to conduct their variant of collectivist economic planning. Competition, on the other hand, was reduced to the struggle of firms to obtain procurement contracts from the bureaucracy.<sup>31</sup>

It should have become clear that the actual economic policy of national socialism – mostly characterized by planning – stands in stark contrast to Eucken’s concept of a competitive order. While the instruments of planning must be seen first and foremost as a necessity of Germany’s war preparations, Janssen argues that speculations on a peacetime economic system of national socialism<sup>32</sup> are counterfactual. Since war can be considered the

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<sup>31</sup> On the economic implications of the rearmament effort see also Spoerer and Streb 2013, 157-208.

<sup>32</sup> There has been some discussion on whether the Nazis were anticipating a peacetime economic system that would allow for more economic freedom of the entrepreneur, a scenario in which the forced cartelization and other elements of the war economy could possibly have been abolished (see Herbst 1982, 144-47).



logical consequence of national socialist ideology, so can the tendency towards a command economy (Janssen 2012, 525).

Given these considerations, how can we explain Hellwig's remarks on the reception of ordoliberal thought by the Nazis? We have already pointed to the theoretical differences between the Austrian and the ordoliberal variant of liberalism. But there is an additional explanatory approach. Hellwig's remarks may be explained by his personal acquaintance with Miksch rather than with Eucken or Böhm. According to Hellwig, Miksch never disputed that the Nazis liked the concept of performance-competition. However, the letter from May 13 also contains a passage in which Hellwig recalls that he and Miksch used to laugh about the fact that the Nazis did not detect the liberal implications of Miksch's writing. It seems that Hellwig's understanding of what constitutes the liberal part of ordoliberal thinking – and what other part the Nazis could agree with – is influenced by Miksch in particular.

## **VI. Conclusion**

The German-born American economist Henry Wallich was among the first to note the role of the Freiburg ordoliberals as adversaries of the Third Reich. In his book on Germany's post-war economic recovery, Wallich remarks: "During the Nazi period the [Freiburg] school represented a kind of intellectual resistance movement, requiring great personal courage as well as independence of mind" (Wallich 1955, 114). Since the 1950s, this assessment has been commented upon and confirmed in many respects. Hellwig and Muthesius, however, have little to add to this literature; they fail to demonstrate that the Nazis were actually sympathetic to the ordoliberal concept of competition.

But the controversy outlined in this paper is not really concerned with history. Germany's political past is merely used by Hellwig and Muthesius to discredit theoretical and ideological positions that – in their opinion – defy liberal orthodoxy. On May 14, 1955, Muthesius writes to Röpke: "Yet, I do not give up hope that you understand what this is all about, namely to keep liberalism from straying into interventionism". Certainly, the controversy must be seen as part of the larger discussion of what constitutes "liberal" economic policy. Different views on this question led the neoliberal thinkers of the early 20th century to distance themselves from *Laissez-faire* liberalism in the first place; and the discussion on the appropriate role of government has continued ever since. The correspondence among German-speaking members of the MPS depicted in this paper is just

one example; the changing paradigms of the Chicago school are another, better-known instance (see Buchanan 2010).

In the above discussed exchange of letters, the Austrian group – represented by Hayek, Hellwig, Mises and Muthesius – can be credited with having anticipated important arguments on the dynamic nature of markets and competition. Modern thinkers arguing in the ordoliberal tradition would probably be more careful in assessing the dangers of private economic power (Vanberg 1998, 177). But there is also a troubling aspect about the Austrian argument, namely the artificial juxtaposition of Laissez-faire and dictatorship. To Mises, degrading the importance of the Laissez-faire principle means to lay the ground for repression. This can not only be deduced from his letter to Muthesius, but also from other writings: “Laissez faire means: Let the common man choose and act; do not force him to yield to a dictator” (Mises [1949] 1998, 727).

It is this false juxtaposition of Laissez-faire and dictatorship that may provide an explanation for Hellwig’s claim after all. Only if one presumes that *any* kind of “intervention” in the market process constitutes a restriction of individual freedom, can one could argue that the Freiburg school’s view on competition policy is complementary to Nazism. Thus, we assume that Hellwig’s remarks can ultimately be attributed to the same division that emerged with the advent of neoliberalism: Between a liberalism that equals most (if not all) state authority with suppression – and another that emphasizes the positive tasks of government in creating and maintaining a functioning market economy.

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